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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHER E. FISCHER and MARK DOMENICO

Appeal 2009-005362
Application 10/780,122
Technology Center 1700

Decided: March 30, 2010

Before BRADLEY R. GARRIS, PETER F. KRATZ, and
MARK NAGUMO, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 10-15 and 17-21. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM-IN-PART.

Appellants claim a method of manufacturing a tire cover having a display surface which comprises contacting the display surface with a transfer pattern in order to thereby transfer a design to the display surface, wherein the transfer pattern comprises a substrate, a first pigmented material, a second pigmented material, and an adhesive material adhered to the first and second pigmented materials, and “removing said substrate thereby to remove portions of said first pigmented layer” (claim 10). Appellants also claim a more specific embodiment of the previously described method “wherein said second pigmented material includes a plurality of glass particles operative to reflect light received from a light source” (claim 13).

Representative independent claim 10¹ and dependent claim 13 read as follows:

10. A method of manufacturing a tire cover adapted to extend over a tire that includes a tread surface, an annular sidewall surface and a wheel area, comprising:

(a) forming a material in the shape of a tire cover, thereby to comprise:

- (1) a cylindrical panel sized to extend circumferentially around the tire in confronting relation to said tread surface;
- (2) a face panel joined to said cylindrical panel and sized to extend alongside the sidewall surface and across the wheel area;

¹ We observe that claim 10 contains minor informalities which are deserving of correction. At claim 10(a)(2)(i), the phrase “the design” lacks strict antecedent basis and should read – a design –. Similarly at claim 10(c), the phrase “said first pigmented layer” lacks strict antecedent basis and should read – said first pigmented material –.

- (i) said face panel having a display surface adapted to display the design;
- (b) contacting the display surface with a transfer pattern thereby to transfer a design to said display surface, wherein said transfer pattern comprises:
 - (1) a substrate having a surface;
 - (2) a first pigmented material disposed on said surface,
 - (i) said first pigmented material including a plurality of glass particles operative to reflect light received from a light source;
 - (3) a second pigmented material overlaying at least a portion of said first pigmented material; and
 - (4) at least one adhesive material adhered to said first pigmented material and said second pigmented material in a primary design pattern that has at least a first design portion and a second design portion,
 - (i) wherein said at least one adhesive material is adhered to said first pigmented material in a first design pattern that is congruent with said first design portion, and
 - (ii) wherein said at least one adhesive material is adhered to said second pigmented material in a second design pattern that is congruent with said second design portion; and
- (c) removing said substrate thereby to remove portions of said first pigmented layer.

13. A method according to claim 10 wherein said second pigmented material includes a plurality of glass particles operative to reflect light received from a light source.

The references below are relied upon by the Examiner as evidence of obviousness:

Ogi	4,605,461	Aug. 12, 1986
Olsen	5,916,399	Jun. 29, 1999
Saegusa	5,921,449	Jul. 13, 1999

The Examiner rejects all appealed claims under 35 U.S.C. §103(a) as being unpatentable over Saegusa in view of Olsen and Ogi.

Appellants separately argue only claims 10 and 13 (Br. 8-13.) Accordingly, the remaining claims on appeal will stand or fall based on their dependency from claim 10.

The Rejection of Claim 10

Appellants point out that claim 10 recites “removing said substrate thereby to remove portions of said first pigmented layer” (Br. 8). Appellants then argue that, “[i]n Ogi, the disclosure does not teach how to discriminately remove a pigmented layer” (Br. 9).

In the body of the rejection, the Examiner addresses the claim 10 feature under consideration as follows:

Saegusa et al. in view of Olsen do not teach removing a base sheet from the pattern as well as removing portions of the color layer attached to a monolayer of microspheres. Ogi teaches a method of transferring a retroreflective pattern from a sheet onto a fabric surface where in removal of a base film (22), portions of a colored transparent film (30) are removed also (abstract; column 2, line 59 - column 3, line 10; Figure 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to remove portions of the color layer in the transfer sheet as Ogi taught and would have been motivated to do so to vary the colors produced in the final pattern.

(Ans. 4).

Moreover, the Examiner responds to Appellants' argument with the rebuttal set forth below:

With respect to the argument that neither Olsen nor Ogi does not teach the step of removing a substrate to remove a first pigmented layer as well, it is agreed that Olsen does not teach transfer printing a retroreflective pattern by removing a base sheet (16) as well as removing portions of the color layer (22) attached to a monolayer of microspheres (12) (Figure 2). However, Ogi teaches a method of transferring a retroreflective pattern from a sheet (20) onto a fabric surface (10) where in removal of a base film (22), portions of a colored film (30) are removed also. As seen in Figure 2 of Ogi, colors of a transferred image will vary, where the transferred image has visible portions of a colored film (30), metal film (32), and exposed surfaces of microspheres (26).

(Ans. 8).

Based on the Examiner's above-quoted findings regarding the disclosure of Ogi, we perceive no merit in Appellants' unembellished argument that, "[i]n Ogi, the disclosure does not teach how to discriminately remove a pigmented layer" (Br. 9). Ogi explicitly teaches how to discriminately remove portions of a pigmented layer (i.e., colored film (30)).

Appellants also argue that there is no suggestion or motivation for the Examiner's proposed combination of Saegusa and Olsen (Br. 10). However, we agree with the Examiner (Ans. 3-4, 9) that an artisan would have been motivated to use Olsen's method for forming retroreflective images on a surface in order to apply an image to the face panel of Saegusa's tire cover, thereby achieving a logotype as desired by Saegusa (col. 3, ll. 64-67).

Finally, Appellants argue that, "[w]ith regard to Ogi, the Examiner has failed to cite any specific suggestion or motivation to modify the

reference or combine the reference teachings” (Br. 11). This is incorrect. The Examiner expressly states that an artisan would have combined Saegusa and Ogi in order to remove portions of the color layer in the transfer sheet as taught by Ogi “and would have been motivated to do so to vary the colors produced in the final pattern” (Ans. 4).

For the reasons set forth above and in the Answer, Appellants have failed to reveal any harmful error in the Examiner’s rejection of claim 10. Therefore, we sustain the § 103 rejection of independent claim 10 and of non-argued dependent claims 11, 12, 14, 15, and 17-21 as being unpatentable over Saegusa, Olsen, and Ogi.

The Rejection of Claim 13

Appellants argue that the claim 13 feature “wherein said second pigmented material includes a plurality of glass particles operative to reflect light received from a light source” would not have been suggested by Olsen as urged by the Examiner because no glass particles are in the layer of Olsen which corresponds to the claim 13 “second pigmented material” (Br. 11-12).

The Examiner responds to this argument as follows:

With respect to the argument that Olsen does not teach a second pigmented material with limitations of claim 13, Olsen teaches providing a second, reflective pigmented layer (26), comprising reflective ellipsoidal flakes such as nacreous or pearlescent pigment particles (column 5, lines 47-51; column 5, line 66 - column 6, line 1). Thus, Olsen’s teaching is broad enough to conclude that it would have been obvious to provide a second pigmented layer with reflective particles to provide a portion of the sheet material which is capable of retroreflecting color in the overlying first pigmented layer (22) when microspheres are illuminated with a beam of light (column 5, lines 21 -27).

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(Ans. 9-10).

The deficiency of the Examiner's response is that it does not address the "glass particles" requirement of claim 13. Instead, the Examiner determines that "Olsen's teaching is broad enough to conclude that it would have been obvious to provide a second pigmented layer with reflective particles" (*id.*). Even assuming this determination is correct, the rejection is nevertheless defective since it does not result in the claimed "glass particles".

It follows that we cannot sustain the § 103 rejection of claim 13 as being unpatentable over Saegusa, Olsen, and Ogi.

Conclusion

The decision of the Examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (2008).

AFFIRMED

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